

## Ennis Paint Canada ULC (dba Ennis-Flint) Terms and Conditions of Sale

1. **AGREEMENT:** These Standard Terms and Conditions of Sale (these "Terms and Conditions") set forth the terms and conditions upon which Ennis Paint Canada ULC, dba Ennis-Flint ("Seller") will sell certain products to the buyer ("Buyer") listed on the Supply Agreement, order confirmation, or invoice to which these Terms and Conditions are attached. Seller and Buyer sometimes are referred to herein singly as a party or jointly as parties. These Terms and Conditions and the Supply Agreement, order confirmation, or invoice to which these Terms and Conditions are attached (collectively, this "Agreement") constitute the final, complete and exclusive agreement between Buyer and Seller as to the sale of the products, and supersedes all prior oral or written agreements (whether express or implied, including implied by custom, practice, course of dealing, or otherwise) with respect to the same. Any attempted modification of this Agreement by Buyer, and any additional or different terms included in Buyer's purchase order, in any other document responding to any offer by Seller, or in subsequent documents, purchase orders or acknowledgment requests provided by Buyer relating to any offer by Seller are hereby rejected unless conspicuously and expressly assented to in writing by Seller. Finally, Buyer acknowledges and agrees that it has not been induced to enter into this Agreement by any oral or written representation, guaranty or warranty made by Seller, its employees, agents or representatives other than as expressly set out in this Agreement.
2. **TERMS:** All invoices shall be paid within 30 days of receipt of invoice. Payments by credit card will be subject to a 3% fee, payable at the time of payment of the applicable invoice. Seller may defer shipments, alter payment terms, or terminate this Agreement if Buyer breaches any of the terms of this Agreement or fails to pay any invoice within 30 days. Seller may require cash payments, satisfactory security for future deliveries or other adequate assurances of performance if Buyer fails to pay any invoice when due or if Buyer's financial condition becomes impaired in the opinion of Seller. Buyer agrees to purchase, accept delivery of and pay for all products ordered and for which Seller has issued a confirmation. Buyer agrees to pay interest at a rate of 1½% (one and one-half percent) per month (18% per annum calculated monthly), on any unpaid balances past due over 30 days and to reimburse Seller for all costs, charges and expenses (including legal fees and disbursements) incurred by Seller as a result of any default by Buyer in complying with any term or condition of this Agreement or any invoice. Buyer grants to Seller a purchase money security interest in all products sold and in all proceeds thereof to secure payment and performance of all of Buyer's obligations under this Agreement. Buyer hereby authorizes Seller to file a purchase money security interest with the appropriate offices in any jurisdiction in which the product may be shipped to or utilized by Buyer. Buyer waives the rights to receive any financing statement, verification statement or other similar document prepared, filed and/or registered in connection with the security interest granted herein.
3. **QUOTATIONS AND PRICING:** All quotations and pricing must be in writing; oral quotations and pricing will not be binding upon Seller. At any time upon at least 30 calendar days prior written notice, Seller may (a) withdraw or terminate any quotation and (b) modify the pricing for any unfilled order. Each quotation automatically expires upon the later of (a) three months following the date it is issued and (b) either March 31, June 30, September 30, or December 31, whichever is first to occur after the date the quotation is issued.
4. **ACCEPTANCE OF ORDERS:** All orders are subject to Seller's acceptance in writing.
5. **MINIMUM BILLINGS:** Orders amounting to less than two hundred dollars (\$200.00) net will be billed at two hundred dollars (\$200.00).
6. **TRANSPORTATION AND DELIVERY:** Unless otherwise indicated, all products shall be shipped F.O.B. Seller's facility. Unless otherwise provided in this Agreement, "F.O.B." shall be construed in accordance with the Uniform Commercial Code of the State of Texas, as the same may be amended from time to time. The risk of loss of such products shall pass to Buyer upon delivery to the shipper. Unless Seller accepts gives specific instructions given by Buyer relating to shipment, arrangements shall be at Seller's option. Seller is not obligated to give notice of shipment dates. In all events Buyer shall reimburse Seller for extra freight charges and incidental costs incurred for products shipped at Buyer's request by means other than Seller's customary shipping methods. The time of delivery is not of the essence, and Seller will not be liable or responsible for any costs, charges, expenses, damages or for any penalty, liquidated or otherwise, for late or delayed delivery. All shipping dates are approximate and are, in any case, dependent upon prompt receipt from Buyer of all information necessary for the proper execution of Buyer's order. If there is any delay in the receipt of such information, the date of shipment may, at Seller's option, be extended for a reasonable time, taking into consideration conditions at Seller's manufacturing facility at such time. Where deliveries are to be made in one or more installments, whether of specified amount or not, each installment shall constitute a separate agreement and shall be paid for in accordance with the terms hereof, regardless of the claims of Buyer upon this Agreement or any other agreement or relating to products subject to this Agreement or any other products, and the failure to deliver any part of the installment shall not relieve Buyer from the obligation to accept and pay for other deliveries and installments under this Agreement.
7. **TAXES:** The amount of any present or future sales, use, or any similar tax applicable to the products sold under this Agreement, and the amount of any other tax or charge now or hereafter imposed by law, upon, with respect to or measured by the production, sale, shipment, use or price of the products sold hereunder, shall be added to the prices contained herein and paid by Buyer.
8. **PRODUCT RETURNED FOR CREDIT:** In no case are products to be returned to Seller for credit without prior notification to Seller, reasonable opportunity for Seller to inspect the same at the premises of Buyer and the receipt of written permission from Seller authorizing such return. Any products returned without prior authorization remain the responsibility of Buyer, and Seller shall have no responsibility related thereto. Products accepted by Seller for credit shall be subject to a minimum service charge of 25%, plus all transportation charges that are borne by Seller. All products must be securely packed to reach Seller without damage. Any cost incurred by Seller to restore such products to marketable and as new condition will be charged to Buyer. If the return is caused by defect in the products attributable to Seller, and such return is authorized by Seller, full credit will be allowed, including all transportation charges.
9. **PACKING:** Prices quoted include Seller's standard packing. Products sold by volume will meet the stated net volume at a temperature of 25°C / 77°F. Packing which varies from Seller's standard packing may be available at additional cost to Buyer.
10. **INSPECTION AND CLAIMS:** All products must be inspected by Buyer upon receipt, and all claims with respect to amount of products delivered must be made to Seller in writing within five days after receipt of the products by Buyer. NO CLAIMS OF SHORTAGE MAY BE MADE AGAINST SELLER SUBSEQUENT TO THE EXPIRATION OF SUCH FIVE DAY PERIOD.
11. **WARRANTIES:** Seller warrants to Buyer that, as of the date of shipment by Seller, the products shall conform to Seller's standard specifications for such products or to such other specifications as may have been expressly agreed to in this Agreement, and the products shall be delivered free from any lawful security interest, lien or other encumbrance. Said warranty and any associated liability shall be null and void if Buyer applies the products prior to receipt of all required approvals and/or independent laboratory test results. Further, if sampling is required to obtain approval or tests results, Buyer must provide evidence reasonably acceptable to Seller that the techniques used to obtain such samples were in strict compliance with Seller's stated procedure for such sampling. Failure to comply with sampling procedures will negate any warranty and associated liability. SELLER DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. WITHOUT LIMITING THE FOREGOING, SELLER SPECIFICALLY DOES NOT WARRANT THE ACCURACY OR SUFFICIENCY OF ANY ADVICE OR RECOMMENDATIONS GIVEN TO BUYER IN CONNECTION WITH THE SALE OF PRODUCTS HEREUNDER, EXCEPT AS OTHERWISE EXPRESSLY REFLECTED IN THIS AGREEMENT.
12. **LIMITATION OF SELLER'S LIABILITY:** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL SELLER BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY EXEMPLARY, PUNITIVE, REMOTE, SPECULATIVE, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES OR LOSS OF PROFITS, AND NO CLAIM SHALL BE MADE OR AWARDED AGAINST SELLER, FOR ANY SUCH DAMAGES OR LOSS OF PROFITS. Except as provided in Section 11 and this Section 12, Seller shall not be liable for damages of any kind including, but not limited to, product performance in Buyer's application(s). In addition, Seller will not be liable for removal and/or replacement of reflective products or retro reflective characteristics of any installed Seller's products unless agreed to in writing by the parties. In no event will Seller be liable for any claims related to the products after the products have been incorporated into any other product or subject to further processing. Such incorporation or such processing shall be deemed to be a waiver of all claims by Buyer. SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ARISING IN CONNECTION WITH THIS AGREEMENT OR THE SALE OR USE OF THE PRODUCTS, WHETHER IN LAW OR IN EQUITY OR WHETHER IN CONTRACT OR IN TORT, AND WHETHER BASED UPON NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY, BREACH OF CONTRACT OR EQUITABLE PRINCIPLES, OR OTHERWISE, IS EXPRESSLY LIMITED TO, AT BUYER'S OPTION, REPLACEMENT OF THE PRODUCTS WITH RESPECT TO WHICH DAMAGES ARE CLAIMED, OR REPAYMENT OF THE PURCHASE PRICE FOR THE PORTION OF THE PRODUCTS WITH RESPECT TO WHICH DAMAGES ARE CLAIMED. All claims of any kind arising in connection with this Agreement or the sale or use of the products shall be deemed waived unless made in writing within 60 days of the earlier of the date of Seller's delivery or the date fixed for delivery in the event of non-delivery. Seller shall be given, and any claim shall be subject to Seller being provided, a reasonable opportunity to investigate the products subject to any claim.
13. **FORCE MAJEURE:** For purposes of this Agreement, a "Force Majeure Event" shall mean the occurrence of unforeseen circumstances beyond a party's reasonable control and without such party's negligence or intentional misconduct, including, but not limited to, any act by any governmental authority, act of war, natural disaster, fire, strike, boycott, embargo, supply or labor shortage or delay, riot, lockout, labor dispute, or civil commotion. Neither party shall be responsible for any failure to perform due to a Force Majeure Event provided that such party gives notice to the other party of the Force Majeure Event as soon as reasonably practicable specifying the nature and particulars thereof and the expected duration thereof; provided, however, that the failure of a Party to give notice of a Force Majeure Event shall not prevent such party from relying on this Section except to the extent that the other party has been prejudiced thereby. Upon the cessation of the Force Majeure Event, the party affected thereby shall notify the other party of such fact, and use its commercially reasonable efforts to resume normal performance of its obligations under this Agreement.
14. **INTELLECTUAL PROPERTY RIGHTS:** All of the intellectual property related to the products sold to Buyer under this Agreement is the sole and exclusive property of Seller. This Agreement is not a sale of any intellectual property related to the products and Buyer has no title to, or ownership in, such intellectual property. Buyer shall not analyze or otherwise examine any of Seller's products for the purpose of reverse engineering the formulations for such products. Buyer shall not repackage the products or remove any trademarks or copyright notices. Buyer shall not use or seek to register any trademark which is identical to or confusingly similar to any trademark which Seller owns or claims rights in anywhere in the world. Buyer shall promptly and fully notify Seller if Buyer has knowledge of any actual or suspected infringement of any of Seller's intellectual property rights or any claim by any third party that the products infringe the rights of any person.
15. **RIGHT TO SET OFF:** Seller reserves the right to set off against any unpaid balance owing to Seller by Buyer, any sums owing by Seller to Buyer, whether arising out of this Agreement, any other agreement between Seller and Buyer, or otherwise.
16. **EXPORT CONTROL:** Buyer acknowledges that the products provided under this Agreement may be subject to U.S. Export laws and regulations, and Buyer will not use, distribute or transfer any product, except in compliance with such laws and regulations.
17. **DISPUTE RESOLUTION:** Any unresolved dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in accordance with the JAMS International Arbitration Rules (JAMS) then in effect. Such arbitration shall be conducted by a single arbitrator in Toronto, Canada. Any party may initiate arbitration of any dispute under this Agreement by giving written notice to the other party of the commencement of arbitration proceedings. Within ten days after receipt of notice initiating arbitration, Seller and Buyer shall select, from a list of arbitrators provided by JAMS office serving Toronto, Canada, the arbitrator. If Buyer and Seller are unable to agree on the arbitrator, the arbitrator shall be selected by JAMS. Seller and Buyer shall share equally the costs of the arbitrator, unless the arbitrator determines otherwise. Seller and Buyer shall direct the arbitrator to render a written decision within 30 days after the conclusion of all oral testimony. Except as set forth in this Section 17, the then-current commercial arbitration rules of the JAMS International Arbitration Rules shall govern the conduct of any arbitration proceeding. Notwithstanding anything to the contrary contained herein, either party shall have the right to obtain injunctive relief to protect any rights or property of such party pending determination of the merits of the controversy. The arbitrator shall have the authority to order payment of damages, reimbursement of costs (including reasonable attorneys' fees), including those incurred to enforce this Agreement, and interest thereon in the event the arbitrator determines that a breach hereof has occurred. A decision by the arbitrator shall be final and binding. Judgment may be entered on the arbitrators' award.
18. **GENERAL PROVISIONS:** Failure of either party to exercise any of its rights under this Agreement upon one occasion shall not waive its right to exercise the same on another occasion. If any provision of this Agreement is held invalid, such invalidity shall not affect other provisions of application of this Agreement that can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable. If such invalidity becomes known or apparent to Buyer and Seller, Buyer and Seller agree to negotiate promptly in good faith in an attempt to make appropriate changes and adjustment to achieve as closely as possible consistent with applicable law, the intent and spirit of such invalid provision. Buyer shall not assign or transfer this Agreement without the prior written consent of Seller; provided, however, that Buyer may assign this Agreement in connection with the sale (by merger, sale of stock, sale of assets, or otherwise) of all or substantially all of Buyer's business and assets. Any assignment or transfer of this Agreement in violation of this Section 18 shall be void. This Agreement may be modified only by an amendment expressly stated as such, signed by both parties.
19. **APPLICABLE LAW; VENUE:** This Agreement is performable in Toronto, Canada and shall be governed by and construed in accordance with the laws of the Province of Ontario, without reference to conflicts of laws principles. If any action is brought for the enforcement of an arbitrator's order pursuant to Section 17, venue for such action shall be in Toronto, Canada and each party irrevocably and unconditionally (i) consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in Toronto, Canada, (ii) waives the right to trial by jury, and (iii) consents to service of process by first class certified mail, return receipt requested, postage prepaid. Such courts, as applicable, shall have in personal jurisdiction with respect to such party, and such party hereby submits to the personal jurisdiction of such courts.